

## **REMARKS**

Claims 1-21, 23 and 25-31 are now pending in the application. Of these pending claims, Claims 1-5, 8-10, 13-21, 23 and 28-31 stand rejected, and Claims 6-7, 11-12 and 25-27 are objected to. Claims 19 and 29 are cancelled herein. The amendments to Claims 1, 6, 9 and 16 contained herein are non-narrowing amendments. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **Examiner Interview**

Applicants would like to thank the Examiner for the courtesies extended during the telephone conference of January 11, 2007. During the telephone conference, the rejections under 35 U.S.C. § 112 were discussed. In this regard, the Examiner acknowledged that the claimed first and second actuators are shown as at least elements 20 and 22 in Figure 1. Further discussed were the teachings of the Axelson and Harwin references. It was agreed the references do not teach an actuator disposed between a base and the extension portion, where the actuator rotatably displaces the extension portion with respect to the base portion. As discussed, Applicants believe the amendments merely clarify areas already examined and therefore do not necessitate a further search by the Examiner.

### **REJECTION UNDER 35 U.S.C. § 112**

Claims 9 and 29 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In this regard, the Office states that

the specification does not support first and second actuators. This rejection is respectfully traversed.

As discussed above, the Examiner's attention is directed to Figure 1 which clearly shows examples of first and second actuators, namely elements 20 and 22. In this regard, Claim 9 contains a first actuator which rotatably displaces the extension portion with respect to the base portion. Additionally, Claim 9 contains the limitation that the second actuator is configured to displace the superstructure with respect to the extension portion. Similarly, Claim 21 has been amended to include the limitations of Claim 29, namely that the femoral sizing guide includes this second actuator which is configured to displace the superstructure with respect to the extension portion. Applicants note that none of the cited references teach the pair of actuators as claimed.

#### **REJECTION UNDER 35 U.S.C. § 102 & § 103**

Claims 1, 3-4, 8, 21-24, and 28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Harwin et al. (U.S. Pat. No. 6,458,135). Claims 16-18, 20 and 30-33 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Axelson, Jr. et al. (U.S. Pat. No. 5,860,980). Claims 2, 5, 10 and 13-15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Harwin et al. in view of Muller (US Pub 2001/0018589). Claims 9 and 29 stand rejected under 35 U.S.C. 103(a) as bring unpatentable over Harwin et al. in view of Hodge (U.S. Pat. No. 5,486,178). Claim 19 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Axelson, Jr. et al. in view of Hodge. These rejections are respectfully traversed.

With respect to the Response to Arguments of the Office Action, the Office asserts that the Axelson reference teaches the claim limitation that the first actuator is

disposed between the extension portion and the base portion, and the actuator is configured to rotatably displace the extension portion. Applicants respectfully traverse this characterization.

The Examiner's attention is directed to Figure 1 of the Axelson reference that shows the intermediate posterior skid (38) coupled to the condyle as opposed to the posterior skids (22, 24), as claimed. As such, there is no actuator shown between the posterior skids that is configured to interface with the posterior condyle surface and the superstructure. Applicants again submit that the intermediate skids (36, 38) of Axelson would prevent the posterior skids (22, 24) from interfacing with the condyles. As both sets of skids (22, 24 and 36, 38) are parallel to each other, the intermediate skids (36, 38) of Axelson would interfere or displace the measurement device with the resected surface of the condyles. The skids of the Axelson references therefore cannot, as asserted, meet the structural and functional limitations. Furthermore, there is no actuator that rotatably displaces the extension portion with respect to the base portion.

The Office further states that the knob of the Harwin reference functions as an actuator prior to locking. Applicants submit that there is no teaching in Harwin that functions as an actuator to cause the rotation of the feet with respect to the base portion, as asserted in the Office Action. As such, Harwin does not teach the limitations of independent Claims 1, 10, 16, 21 or 30.

The Examiner's attention is directed to independent Claims 1, 10 and 16 that have been amended to clarify that the first actuator rotatably displaces the extension portion. In this regard, Applicants submit, as discussed during the telephone conference, these limitations are not shown in the Axelson or Hawin references. As such, the rejections under § 102(b) are improper, and independent Claims 1, 10 and 16,

as well as their dependents, Claims 3-5, 8, 11-15, 17, 18 and 20 are in condition for allowance.

The Examiner's attention is also directed to Claim 21 which, as described above, has been amended to clarify that the femoral sizing guide has a pair of actuators. Namely, the first actuator can be a gear (22) disposed between the base and extension portion, and a second actuator (20) disposed between the stylus and base that is configured to laterally translate the base with respect to the stylus. Applicants respectfully assert that none of the references cited disclose the use of a pair of actuators with the first actuator facilitating the rotational position of the alignment components as well as translational movement of the stylus or superstructure as claimed in Claim 21 and its dependents, Claims 23, 25, and 26-28. As such, Applicants assert the Examiner has not met the required burden to make a prima facie showing of anticipation.

With respect to independent Claim 30 and its dependent Claim 31, Applicants direct the Examiner's attention to Figure 7 of the instant application. As can be seen, the base portion of the kit of sizing guide components is configured to allow fixation of both a fixed foot portion or a second foot portion which is configured to be rotatably coupled to the first coupling mechanism. Applicants note that none of the references show a base portion for sizing guide components which meet these limitations. As such, Applicants respectfully submit that the stated rejection of these claims is improper and the Examiner has not met the requirements of a prima facie showing of anticipation.

### ALLOWABLE SUBJECT MATTER

The Examiner states that Claims 6-7, 11-12, and 25-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 6 has been non-narrowingly amended to include the limitations of Claim 1 and 2, thus placing Claim 6 and 7 in condition for allowance. Applicants thank the Examiner for the acknowledgment of allowability. In view of the amendments and comments herein, Applicants submit all of the claims are in condition for allowance.

### CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated:                     

                     16, 2007

By:                     

                      
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